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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/015,582	12/17/2001	Katrien Maria Jozefa Van Laere	BO 44718	5887

466 7590 03/21/2003

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EXAMINER

MELLER, MICHAEL V

ART UNIT	PAPER NUMBER
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1654

DATE MAILED: 03/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/015,582

Applicant(s)

VAN LAERE ET AL.

Examiner

Michael V. Meller

Art Unit

1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Newly submitted claims 15 and 18 are directed to new species of the invention (not originally claimed) that are independent or distinct from the invention originally claimed for the following reasons: newly presented claims 15 and 18 are directed to species of further components which were not originally presented by applicant. Since applicant already received an action on the further components of claim 14, then claims 15 and 18 are withdrawn from further consideration by the examiner. The addition of claims 15 and 18 adds more possibilities to claim 10 and claim 14 was the only originally added species. Claims 15 and 18 present species which are materially distinct from the species of claim 14 since magnesium, cobalt, and inhibitors of intestinal proteolytic enzymes are very different from carbohydrate absorption inhibitors, for example.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 15 and 18 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

Claims 10 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by SU 654682 or JP 408245397.

Applicant argues that the fructose in SU is administered to the patient, but it is clear from SU that the glucose isomerase is also administered to the patient.

JP is clear in stating that that the inhibitor comprises a glucose isomerase, thus it does meet the claims.

Claim Rejections - 35 USC § 103

Claims 10-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over SU 654682 or JP 408245397 in view of Tsujino and JP 410287575.

Applicant first argues that the references do not relate to the same technical field. SU and JP '397 teach administering the glucose isomerase to patients. SU specifically mentions diabetic patients (who are routinely overweight and want to lose weight). Thus it would have clearly been within the purview of the skilled artisan to use the composition containing glucose isomerase to treat a patient with weight problems. Tsujino shows that enteric administration of pharmaceutical formulations is well known

Art Unit: 1654

and would have been obvious for one of ordinary skill in the art to perform since the references are already administering the glucose isomerase orally. JP '575 shows that Gymnema is administered to a patient for antiobesity purposes.

Thus, the claims have clearly been met.

Claims 10-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carey et al. '508 or Carey et al. '358 in view of Tsujino, SU 654682 and JP 410287575.

Applicants arguments are similar to the ones addressed above. The rejection was made over a combination of references and thus the rejection must be taken as a whole.

The Carey references do not teach using the specific glucose isomerase, but glucose isomerase is a well known isomerase and is clearly taught in SU.

Thus, one would have had the expectation of success when using glucose isomerase and hence the motivation to use that type of isomerase.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

Art Unit: 1654

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael V. Meller whose telephone number is 703-308-4230. The examiner can normally be reached on Monday thru Friday: 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback can be reached on 703-306-3220. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-0294 for regular communications and 703-308-0294 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.



Michael V. Meller
Primary Examiner
Art Unit 1654

MVM
March 19, 2003